Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

JAMES ANDEREGG,

Petitioner,

vs.

STATE OF WASHINGTON,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), this Court ruled that if the traditional, rehabilitative, protections of the juvenile justice system were stripped away, then the justification for depriving juveniles of the fundamental constitutional right to a jury trial would also disappear. Has that time arrived in Washington – does the Washington court's decision to uphold deprivation of the right to a juvenile jury trial, despite the punitive nature of Washington's 1997 amendments to its juvenile code, now violate the due process, jury trial, and equal protection clauses of the U.S. Constitution?

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I. PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Petitioner James Anderegg requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of the State of Washington, which became final on December 2, 1999, when the Washington Supreme Court denied review (Appendix A).

II. OPINIONS BELOW

James Anderegg, a juvenile, was found guilty of assault in the second degree for driving the car from which another juvenile fired a paintball gun and hit a girl (Order of Disposition, Appendix B). The Court of Appeals of the State of Washington affirmed in a decision that was published in part on June 21, 1999, at 96 Wash. App. 167, 978 P.2d 1121 (1999) (Appendix A contains entire opinion). Mr. Anderegg's petition for discretionary review was denied by the Washington Supreme Court on December 2, 1999 (Appendix C).

III. JURISDICTION

The Washington Supreme Court's final decision was filed on December 2, 1999. This petition is timely filed. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

IV. STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The jury trial right provision of the Constitution, U.S. Const. amend. VI, provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The due process and equal protection provisions applicable to the states are contained in U.S. Const. amend. XIV, § 1, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Rev. Code 13.04.021(2) provides: "Cases in the juvenile court shall be tried without a jury."

V. STATEMENT OF THE CASE

The Crime. Jimmy Anderegg was charged with assault in the second degree in violation of Wash. Rev. Code 9A.36.021(1)(a). The juvenile trial court's findings show that he was found guilty as an accomplice.

The trial testimony. Mr. Anderegg was tried as a juvenile with Lauren Breaux (his girlfriend) and J.J. Maroschek. The state began its case by calling Molly Savannah. She testified that she and her sister Courtney McCann – the victim – were walking towards their home at about 10:00 p.m. on September 15, 1997. It was dark, but she saw McCann get hit three times by a paintball in the shoulder, arm, and eye. The paintball came from the right side of a passing car.

Courtney McCann, who was hit, said she saw a metallic blue car, "like it had passed by me. . . . And then I saw someone wave out the back." Then she saw them turn around and felt something on her shoulder. They kept walking, but her sister called to her so she turned around "and, like, as I turned around I just felt something hit my eye." Around two minutes elapsed between the hit on the shoulder and the hit in the eye. McCann recognized Anderegg, and saw about four others in the car.

McCann then realized she could not see and they ran home. Her eye injury required cataract surgery.

McCann made clear that the first time the car went by it was travelling north, on the far side of the street. Nothing happened on that pass. Then the car turned around and headed south, while she was still walking north. She was then hit on the shoulder. But when she

was hit in the eye, the car was not near – she did not even see it.

Hester Ryan, one of the passengers, testified next. She stated that Anderegg was driving, Breaux was in the passenger seat, and she (Ryan) was in the back with three others. The first time they drove past McCann, she waved – but Breaux "said to turn around and shoot her." Anderegg turned the car around and then Maroschek, who was seated in the back, fired the gun three or four times. On cross-examination, Ryan clarified that the first time they saw McCann they were driving north. Anderegg turned the car, to head south. It was then that Maroschek shot the first time.

Maroschek, the shooter, explained that they were driving north on 164th NE in Bellevue when Breaux shouted, " 'there she is, there she is, turn around, let's shoot her.' " Then "Jimmy or James started to do a U-turn and he did that U-turn and then we proceeded southbound back towards Courtney." "Lauren was saying well, let's get her, let's shoot her, and so I fired one quick shot." He thought he missed. Then Anderegg made another U-turn – but this one was for the purpose of heading back in the direction they were originally travelling: "And then Jimmy turned another U-turn again to head northbound." Then – after Anderegg's "another U-turn" for the purpose of "again . . . head[ing] northbound" – Maroschek shot from the far side of the car.

The trial court's factual findings. The trial court ruled that Mr. Anderegg was guilty as an accomplice because he turned the car around the first time at Lauren Breaux's urging. The court further found that Anderegg turned the

car around a second time, to continue northbound, but that the only thing showing any intent on his part to assist the crime that followed was his failure to stop Maroschek:

> The testimony of Mr. Maroschek has made it clear that, in fact, after one shot had been fired out the window at Ms. McCann with the sound and the visibility of that act, Mr. Anderegg again turned the vehicle around and came back again past Courtney McCann's location.
>
> *There was no evidence of anything said or done to prevent or disincline Mr. Maroschek from the continuation of the previously established intention* to discharge the weapon in the direction of Ms. McCann.

(Emphasis added). The trial court nevertheless determined that Anderegg was guilty as an accomplice.

The stage in the state court proceedings at which the federal question was raised. Mr. Anderegg raised the jury trial issue on direct appeal to the Washington Court of Appeals. That court decided the juvenile jury trial issue in its published opinion.

VI. SUMMARY OF REASONS FOR GRANTING THE WRIT

A juvenile does not have the same rights as an adult when he or she is involved in a traditional juvenile adjudication that is truly rehabilitative rather than

punitive.[1] For that reason, the states are under no constitutional compulsion to provide juveniles subject to such traditional juvenile adjudications with a jury trial – and many do not.[2] This Court's cases make clear, however, that if traditional, rehabilitative, protections of the juvenile justice system are absent, then the justification for depriving the juvenile of the jury trial right also disappears.[3]

Thirty years ago in *McKeiver*, those protections remained and, hence, there was no constitutional right to a juvenile jury trial. Things have changed. Recent amendments to Washington's juvenile code – especially the 1997 Juvenile Justice Act – strengthen its punitive character at the expense of its formerly rehabilitative nature. New Washington laws strip juvenile adjudications of privacy; unseal the proceedings; mandate public disclosure of juvenile convictions; provide for future admissibility of such adjudications as substantive evidence and for sentence enhancement purposes; and even make juvenile adjudications permissible predicates to imposition of the death penalty, just like adult convictions. These changes since *McKeiver*, signaling a rejection of the privacy and of the absence of enduring adverse consequences that were the hallmark of the juvenile justice ideal, make this issue ripe for review once again.

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[1] *In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541 (1966).

[2] *E.g., State v. Schaaf*, 109 Wash.2d 1, 743 P.2d 240 (1987); *In re T.R.S.*, 1 Cal. App. 3d 168, 182, 81 Cal. Rptr. 574 (1969); *Estes v. Hopp*, 73 Wash.2d 263, 438 P.2d 205 (1968).

[3] *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

VII. THE WASHINGTON APPELLATE COURT'S DECISION, DENYING JUVENILES THE RIGHT TO A JURY TRIAL IN WASHINGTON'S NEW PUNITIVE AND PUBLIC JUVENILE JUSTICE SYSTEM, CONFLICTS WITH THIS COURT'S PRECEDENT UPHOLDING DEPRIVATION OF THAT RIGHT ONLY WHERE THE JUVENILE EXCHANGES IT FOR PRIVATE, PROTECTIVE, AND REHABILITATIVE TREATMENT

A. Distinctions Between Washington's Juvenile Justice System And Adult Criminal Proceedings Have Significantly Eroded

No longer civil, but criminal. Juvenile criminal matters in Washington were traditionally handled civilly, not criminally.[4] This was the rule in the sister states, also: juvenile adjudications were traditionally considered strictly civil matters.[5]

That has all changed in Washington. In 1997, the Washington legislature gave "adjudications" under the juvenile code the same meaning as "convictions" under

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[4] *E.g., State v. Temple*, 5 Wash. App. 1, 485 P.2d 93 (1971).

[5] *See* Cal. Welf & Inst. Code § 203 ("An order adjudging a minor to be a ward of the juvenile court *shall not be deemed a conviction of a crime for any purpose*, nor shall a proceeding in a juvenile court be deemed a criminal proceeding.") (emphasis added); *People v. Frierson*, 53 Cal.3d 730, 747, 280 Cal. Rptr. 440, 808 P.2d 1197 (1991), *cert. denied*, 502 U.S. 1061 (1992); *People v. Sanchez*, 21 Cal. 2d 466, 132 P.2d 810, 814 (1942) (proceedings in juvenile court "are not penal . . . and its order adjudging a person a ward of the court is not a conviction of a crime").

the adult Sentencing Reform Act (SRA).[6] A patchwork of other statutes similarly treat juvenile adjudications as criminal convictions for background check, license suspension, and similar purposes.[7]

No longer closed. Juvenile criminal matters were traditionally closed to public view. As this Court ruled in *In re Gault*, 387 U.S. 1, 24 (1967), the juvenile justice system was characterized in part by a desire "to hide youthful errors from the full gaze of the public and bury them in the forgotten past." Thus, Washington delinquency determinations were made in closed courtrooms,[8] like delinquency determinations in the sister states.[9] Under Washington's 1977 law, juvenile records could be sealed

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[6] Wash. Rev. Code 13.04.011(1) (" 'Adjudication' has the same meaning as 'conviction' in RCW 9.94A.030, and the terms must be construed identically and used interchangeably"); Wash. Rev. Code 9.94A.030(10) ("conviction" includes "adjudication of guilt pursuant to Titles 10 or 13").

[7] Wash. Rev. Code 43.43.830(4) (statute concerning background checks provides that "conviction record" includes crimes committed while either adult or juvenile); Wash. Rev. Code 46.20.342(2) (referring to "conviction" of juvenile or adult in addressing penalties for driving while license suspended or revoked); Wash. Rev. Code 74.13.034(2) (statute concerning crisis residential centers refers to "convicted" juveniles).

[8] Ch. 160, § 10, 1913 Wash. Laws 527 (repealed 1977). Juvenile proceedings before 1977 were confidential. Patrick & Jensen, *Changes in Rights and Procedures in Juvenile Offense Proceedings*, 14 Gonzaga L. Rev. 313, 315-16 (1979). *See State v. Webster*, 69 Wash. App. 376, 848 P.2d 1300 (1993) (court must seal juvenile record if all conditions of Wash. Rev. Code 13.50.050 met).

[9] *E.g., In re Hector R.*, 152 Cal. App. 3d 1146, 1154, 200 Cal. Rptr. 110, 115 (1984).

and destroyed after discharge from custody in many cases. Wash. Rev. Code 13.04.274(2). Even under its 1985 law, juvenile records could be sealed after two years and records could be destroyed when the offender reached age 23. Former Wash. Rev. Code 13.50.050(10)-(17).

The traditionally sealed nature of juvenile proceedings has now also changed in Washington. Wash. Rev. Code 10.97.050 allows public dissemination of juvenile records in the same manner as adult records, *meaning to anyone who asks.* A 1997 amendment requires that the court inform a child's school principal of many juvenile convictions. Wash. Rev. Code 13.04.155.[10] Other amendments require community notification when juveniles who are convicted of stalking, sex offenses, or violent offenses leave juvenile custody. Wash. Rev. Code 13.40.215(1).[11]

No longer inadmissible as evidence. Juvenile criminal matters, traditionally, could not be used against the defendant in a later, adult criminal proceeding. They

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[10] At the same time, the Legislature revised laws regarding sealing of juvenile records to make them analogous to the "wash out" provisions of the SRA – meaning that they could be considered as prior convictions for future sentence enhancement purposes to the same extent that adult criminal convictions could be so considered. Wash. Rev. Code 9.94A.360(2).

[11] Further, juvenile courtrooms are now open to the public. Juveniles convicted of Class A sex offenses are required to register as sex offenders. Wash. Rev. Code 9A.44.130, 9A.44.140. Class A felonies and sex offense records can never be sealed. Wash. Rev. Code 13.50.050(11)(d). Juvenile offender records are available to potential employers. Wash. Rev. Code 10.97.030(4); 10.98.050(1); 13.50.050(11)(a).

were unavailable to impeach testimony.[12] Similarly, juvenile adjudications used to be inadmissible as *convictions* to prove guilt in any subsequent matter.[13] They were inadmissible to transform a lower degree of crime into a higher degree in a subsequent proceeding.[14] In fact, this was the rule in every jurisdiction of which we are aware.[15]

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[12] *State v. Gerard*, 36 Wash. App. 7, 671 P.2d 286 (1983), *review denied*, 100 Wash.2d 1035 (1984); *State v. Matthews*, 6 Wash. App. 201, 492 P.2d 1076 (1971), *review denied*, 80 Wash.2d 1006 (1972) (in manslaughter conviction, trial court erred in allowing the state, on cross-examination of defendant, to attack his credibility by showing his past juvenile record – even though defendant testified that he had never been convicted of a crime; *State v. Wilson*, 1 Wash. App. 1001, 465 P.2d 413, *review denied*, 78 Wash.2d 994 (1970); E.R. 609(d) ("Evidence of juvenile adjudications is generally not admissible under this rule.").

[13] *People v. Bernard*, 204 Cal. App.3d Supp. 16, 251 Cal. Rptr. 631 (1988); *Strouth v. State*, 755 S.W.2d 819 (Tenn. 1986) (in prosecution for first degree murder, trial court may have erred in allowing testimony about defendant's juvenile record into evidence – but harmless error); *People v. West*, 154 Cal. App.3d 100, 201 Cal. Rptr. 63 (1984).

[14] *In re Anthony R.*, 154 Cal. App.3d 772, 201 Cal. Rptr. 299 (1984) (juvenile was not "convicted" of either present or prior offense but, rather, his juvenile court wardship was merely continued on both occasions; hence, provision of penal code transforming what would otherwise be misdemeanor into more serious offense with greatly increased penalty, upon subsequent conviction for petit theft, not applicable to juvenile).

[15] *E.g.*, *People v. D'Apice*, 735 P.2d 882 (Colo. App. 1986); *Van Orman v. State*, 704 S.W.2d 689 (Mo. App. 1986); *State v. Keiser*, 196 Conn. 122, 491 A.2d 382 (1985); *State v. Beach*, 215 Neb. 213, 337 N.W.2d 772 (1983); *State v. Butler*, 626 S.W.2d 6 (Tenn. 1981); *Rivas v. State*, 501 S.W.2d 918 (Tex. 1973); *Banas v. State*, 34 Wis. 2d 468, 149 N.W.2d 571, *cert. denied*, 389 U.S. 962 (1967).

That has also changed in Washington. Juvenile adjudications can now form the basis for a petition seeking indefinite incarceration of the former juvenile offender as a "sexually violent predator"[16] and for enhanced penalty recidivist statutes.[17]

No longer inadmissible for sentence enhancement – now available even as a prior conviction predicate for the death penalty. Juvenile criminal matters, traditionally, could not be used against the adult defendant to enhance punishment. They could not be used as "aggravating factors" necessary to support a death sentence.[18] They

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[16] Wash. Rev. Code 71.09.030 (permitting state to file sexually violent predator petition based on single predicate juvenile adjudication, but stating that prerequisite for being predator is being charged or convicted of "crime" of sexual violence, Wash. Rev. Code 71.09.020).

[17] Juvenile adjudications can also be used as predicate offenses under the Armed Career Criminal Act, 18 U.S.C. § 922(g)(1), § 924(e), as well as under the federal three strikes law, 18 U.S.C. § 3559(c).

[18] *State v. Beal*, 311 N.C. 555, 319 S.E.2d 557 (N.C. 1984) (statutory aggravating factor was "defendant had been previously convicted of a felony involving the use or threat of violence to the person"; prejudicial error to allow jury to consider defendant's prior youthful offender adjudication as felony conviction); *Baldwin v. State*, 456 So.2d 117, 123-25 (Ala. Cr. App. 1983) ("In North Carolina, as in Alabama, juvenile proceedings are not criminal in nature and a determination of delinquency is not a conviction"; hence, "adjudication of guilt in [North Carolina] juvenile proceeding does not fall within one of the aggravating circumstances enumerated in [Alabama's death penalty law]" which lists "convictions," not adjudications, as aggravating factors), *aff'd, Ex Parte Baldwin*, 456 So.2d 129 (Ala. 1984), *aff'd*, 472 U.S. 372 (1985).

could not be used to enhance lesser punishments, either.[19]

That has also changed. Juvenile adjudications are counted at SRA sentencings in Washington.[20] They make an adult criminal defendant ineligible for the benefits of first offender treatment.[21] Multiple prior juvenile offenses are counted at subsequent adult sentencings like multiple adult felonies, rather than by the prior, more lenient method.[22] A juvenile adjudication prevents an adult criminal from being eligible for more lenient and rehabilitative sentencing alternatives.[23] They are now admissible

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[19] *See People v. Bernard*, 204 Cal. App. 3d Supp. 16, 251 Cal. Rptr. 631 (1988) (although DMV considered juvenile offense in deciding whether to suspend or revoke the driver's license, trial court was prohibited from considering it when sentencing defendant); *In re Anthony R.*, 154 Cal. App. 3d 772, 201 Cal. Rptr. 299; *People v. Price*, 172 Mich. App. 396, 431 N.W.2d 524 (1988) (where defendant was 31 at time of subsequent sentencing, juvenile record should not have been considered, especially since former court rule provided for automatic expungement of juvenile record at age 27); *State v. Hagemeier*, 310 N.W.2d 218 (Iowa 1981) (error for sentencing court to consider defendant's juvenile record).

[20] Wash. Rev. Code 9.94A.360 (requiring consideration of certain juvenile convictions); Wash. Rev. Code 9.94A.030(12) (" 'Criminal history' means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere").

[21] Wash. Rev. Code 9.94A.120(5), 9.94A.030(22).

[22] Wash. Rev. Code 9.94A.360(5)(a)(i).

[23] Wash. Rev. Code 9.94A.120(6)(a)(ii) (adults with juvenile felony convictions do not qualify for Drug Offender Sentencing Alternative); Wash. Rev. Code 9.94A.137(a)(ii) (adults with juvenile record foreclosed from being sentenced to work ethic camp).

even at Washington death penalty sentencing proceedings, despite the limitation of admissible prior adjudications to "convictions."[24]

No longer dispositions rather than sentences. Traditionally, the disposition following juvenile adjudication was not considered a sentence. The judge or the institution to which the child was committed could discharge the child "whenever his or her reformation shall be deemed complete."[25] That has also changed: the 1977 Juvenile Justice Act introduced determinate sentencing according to a grid, with some limited discretion. Wash. Rev. Code 13.40.0357. Much of that discretion was removed with the 1997 amendments.[26] *Juvenile sentences may even be served in adult prisons* in Washington.[27]

No longer need for transfer hearing in serious cases. Treatment – and perhaps conviction – as an adult always used to require a transfer or decline hearing in juvenile court, first, where the juvenile court judge would review a number of factors concerning the minor's amenability to treatment before deciding whether he or she should be transferred to adult court, instead. That has also changed.

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[24] *In re Lord*, 123 Wash.2d 737, 870 P.2d 964, *cert. denied*, 513 U.S. 849 (1994).

[25] Former Wash. Rev. Code 13.04.095 (repealed, 1977). *See People v. Sanchez*, 21 Cal.2d 466, 132 P.2d 810, 814 (1942) ("the juvenile court has no power to impose a criminal sentence").

[26] See Wash. Rev. Code 13.40.160(5) and 13.40.165, concerning suspension of incarceration for drug treatment.

[27] Wash. Rev. Code 13.40.280(4).

Wash. Rev. Code 13.04.030(1)(e)(iv) vests original jurisdiction over juvenile offenders charged with certain violent offenses in the adult criminal court, automatically.[28]

No longer a clean state at age eighteen. In short, traditional juvenile dispositions did not have enduring adverse effects on the juvenile. That has all changed; in Washington, juvenile adjudications trigger application of all sorts of disabilities that used to be reserved for adults. The juvenile offender can be forced to serve his or her sentence in the regular adult prison. *Monroe v. Soliz*, 132 Wash.2d 414, 939 P.2d 205 (1997) (Wash. Rev. Code 13.40.280, which permits state to transfer juvenile from juvenile detention facility to adult prison, upheld; does not convert juvenile adjudication into adult prosecution). The juvenile offender is subject to mandatory HIV testing, just as are adult prisoners. *In re A, B, C, D, E*, 121 Wash.2d 80, 847 P.2d 455 (1993) (mandatory HIV testing for sex offenders, Wash. Rev. Code 70.24.340(1)(a), applies to juveniles). The juvenile adjudication counts under the newer 1995 version of the adult felon-in-possession firearm crime. *State v. McKinley*, 84 Wash. App. 677, 929 P.2d 1145 (1997). Juveniles are subject to the same permanent sex offender registration laws as adult offenders. *State v.*

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[28] *In re Boot*, 130 Wash.2d 553, 925 P.2d 964 (1996) (upholding that statute against due process and equal protection challenges); *State v. Stackhouse*, 88 Wash. App. 963, 947 P.2d 277 (1997) (resolving conflict between this statute, divesting juvenile courts of jurisdiction to adjudicate "serious violent offenses" committed by 16 and 17 year olds and Wash. Rev. Code 13.40.110(1), mandating declination hearings, against need for declination hearing).

Heiskell, 129 Wash.2d 113, 916 P.2d 366 (1996). The juvenile and adult systems remain separate, but now, in Washington, they are essentially equal in critical respects.

B. Under McKeiver v. Pennsylvania, These are the Distinctions that are Critical to Deciding Whether the Jury Trial Right Can be Abrogated; The Washington Court's Decision to the Contrary Warrants Review.

It is the legislature's evolving treatment of juveniles, rather than something inherent in the nature of being a juvenile, that determines whether the juvenile jury trial right must be reinstated. This is clear from *McKeiver v. Pennsylvania*, 403 U.S. 582, 551, which noted that "perhaps . . . ultimate disillusionment" with the traditional *parens patriae* conception of juvenile court "will come one day," necessitating restoration of the juvenile jury trial right.[29]

The recent changes to Washington law summarized above reflect just such disillusionment. *McKeiver* never said that the state legislature's disillusionment with the rehabilitative goal had to be total, or that the juvenile justice system had to be completely abandoned in favor of a unitary system with adults, for the constitution to require a jury trial. Indeed the *McKeiver* Court itself made a detailed factual inquiry into whether the amount of rehabilitative benefit the juvenile gained from the informality of the juvenile justice system sufficed; it did not ask whether the juvenile was gaining any benefit at all no

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[29] *Accord* Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing Juvenile Court*, 69 N.C. L. Rev. 1083 (1991).

matter how slight. This Court has not engaged in such an inquiry in the almost thirty years since *McKeiver*, and the time is ripe for it.

C. Under this Court's Equal Protection Clause Cases, the Result is the Same

If, as discussed above, juveniles are similarly situated to adults with regard to the consequences of their criminal convictions, then the equal protection clause mandates that juveniles receive the same procedural protections that adults receive – including the right to a jury trial. The state appellate court's decision to the contrary conflicts in principle with this Court's equal protection precedent, most notably *Baxstrom v. Herold*, 383 U.S. 107, 111 (1966) and *Humphrey v. Cady*, 405 U.S. 504, 512 (1972). Those cases hold that differences in the relative dangerousness of prisoners can justify certain differences in how they are treated, for example in their conditions of confinement. They further hold, however, that such differences cannot justify a difference in procedures concerning the *adjudication itself*. Thus, if the juvenile adjudication in Washington is "essentially equivalent"[30] to an adult conviction (in the rehabilitative versus punitive and private versus public respects made relevant by *McKeiver*) then the Washington appellate court's decision affording jury trials to adults but not to juveniles conflicts with this Court's equal protection precedents.

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[30] *Humphrey v. Cady*, 405 U.S. 504, 508.

VIII. CONCLUSION

This Court should grant a writ of certiorari to resolve the conflict between the Washington appellate court's decision and the decision of this Court in *McKeiver v. Pennsylvania* concerning the juvenile's right to a jury trial. It should also grant the writ to resolve the conflict between the state appellate court's decision and the decision of this Court in *Baxstrom v. Herold* and its progeny concerning the applicability of the equal protection clause to these juveniles.

RESPECTFULLY SUBMITTED this 28th day of February, 2000.

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APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION ONE

(Filed Jun. 21, 1999)

STATE OF WASHINGTON, Respondent, v. J.H., Appellant.	No. 41486-1-I (Consolidated Case)
STATE OF WASHINGTON, Respondent, v. Z.B., Appellant.	No. 41488-7-I
STATE OF WASHINGTON, Respondent, v. E.S., Appellant.	No. 41638-3-I
STATE OF WASHINGTON, Respondent, v. D.S., Appellant.	No. 41942-1-I

STATE OF WASHINGTON, Respondent, v. T.M., Appellant.	No. 41774-6-I
STATE OF WASHINGTON, Respondent, v. R.G., Appellant.	No. 41695-2-I
STATE OF WASHINGTON, Respondent, v. A.W., Appellant.	No. 41633-2-I
STATE OF WASHINGTON, Respondent, v. D.S., Appellant.	No. 42055-1-I
STATE OF WASHINGTON, Respondent, v. J.A., Appellant.	No. 42253-7-I

STATE OF WASHINGTON, Respondent, v. G.K., Appellant.	No. 41766-5-I
STATE OF WASHINGTON, Respondent, v. C.M., Appellant.	No. 41875-1-I
STATE OF WASHINGTON, Respondent, v. L.F., Appellant.	No. 41991-9-I PUBLISHED OPINION (IN PART) FILED: JUN 21 1999

ELLINGTON, J. – In this consolidated appeal, we consider whether the 1997 amendments to the juvenile justice code have made juvenile proceedings so similar to adult criminal proceedings that juvenile offenders are now entitled to a jury trial under either the United States or Washington constitution. Applying Washington case precedent, we find that the amendments do not render juvenile proceedings so much less rehabilitative and more punitive that the right to a jury trial must attach. Some of the juveniles raise additional arguments based on the facts of their particular cases. We find no reversible error

with respect to these issues. Accordingly, we affirm in each of the cases.

I. Sixth and Fourteenth Amendments

The federal constitution guarantees an adult criminal defendant the right to an impartial jury in ail criminal prosecutions.[1] The Washington constitution contains the same guarantee.[2] Juvenile offender cases, however, are tried without a jury under RCW 13.04.021(2). Because of the differences between the juvenile justice system and the adult criminal system, the denial of a jury trial to juveniles has been repeatedly held constitutional.

In *McKeiver v. Pennsylvania*, the United States Supreme Court held that "trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."[3] The plurality in *McKeiver* also noted the possibility that a jury trial might "remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding."[4] In *In re: Estes v. Hopp*, our state court reached the same conclusion.[5] After enactment of the Juvenile Justice Act (JJA), our Supreme Court again held in *State v. Lawley* there is

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[1] U.S. Const., amend. VI, XIV.

[2] Wash. Const. art. I, §§ 21, 22.

[3] 403 U.S. 528, 545, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971).

[4] *Id.*

[5] 73 Wn.2d 263, 268, 438 P.2d 205 (1968).

not a constitutional right to a jury trial under our statutes.[6] The *Lawley* Court rejected the argument that the JJA represented a shift in focus from rehabilitation to punishment such that juvenile proceedings were so akin to adult criminal prosecutions that a right to jury trial arose. Later, considering amendments to the JJA that increased the emphasis on punishment, our Court again addressed the question in 1987, and held in *State v. Schaaf* that despite the amendments, juvenile proceedings remained rehabilitative in nature and distinguishable from adult criminal prosecutions, and that the amendments created no right to trial by jury.[7]

After *Schaaf* was decided, the JJA was again amended to allow a juvenile offender who is determined to be a continuing and serious threat to the safety of others in the institution to be transferred from a juvenile detention facility to the department of corrections.[8] In *Monroe v. Soliz*, the Court held that the possibility of such a transfer does not transform the juvenile's adjudication into an adult criminal conviction to which the right to trial by jury attaches.[9] The Court noted that the differences between the adult criminal system and the juvenile justice system have led the Court "to consistently conclude the right to a jury trial does not extend to juveniles adjudicated in juvenile proceedings." The Court emphasized that a criminal conviction carries far more serious ramifications than a juvenile adjudication, regardless of

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[6] 91 Wn.2d 654, 655, 591 P.2d 772 (1979).

[7] 109 Wn.2d 1, 4, 743 P.2d 240 (1987).

[8] RCW 13.40.280.

[9] 132 Wn.2d 414, 420, 939 P.2d 205 (1997).

where the juvenile serves his or her time, and, applying the reasoning in *Schaaf*, concluded the amendment did not create a right to a jury trial.[10]

The distinctions between the adult and juvenile systems that have been found to have constitutional consequence on this question lie in the rehabilitative purposes and lesser penalties of the Juvenile Justice Act, which stand in contrast to the punitive purpose and much more serious penalties of the adult criminal system. Our Supreme Court described the dichotomy thusly:

> The purpose of the juvenile justice system is ostensibly to establish a system having primary responsibility for, and responding to, the needs of offenders, as well as to hold juveniles responsible for their offenses. *The critical distinction between the two systems lies in the Juvenile Justice Act of 1977's (JJA) policy of responding to the needs of juvenile offenders. We have in the past found such a policy as rehabilitative in nature, whereas the criminal system is punitive. Such differences have led us to consistently conclude the right to a jury trial does not extend to juveniles adjudicated in juvenile proceedings.*[11]

II. 1997 Amendments to Juvenile Justice Act

A. Purpose and Intent

We first note that the legislature's statement of intent and purpose[12] changed with enactment of the 1997

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[10] *Id.*

[11] *Id.* at 419-20 (emphasis added) (citations omitted).

[12] *See* RCW 13.40.010.

amendments only insofar as it increased the emphasis on responding to the needs of juvenile offenders.[13] The legislative intent underlying the juvenile justice system remains the establishment of "a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders."[14] The JJA is also intended to hold youthful offenders accountable for their offenses, and to require that "communities, families, and the juvenile courts carry out their functions consistent with this intent."[15] To effectuate these policies, the legislature enumerated 11 purposes of the JJA and declared them to be of equal importance:[16] (1) to protect citizens from criminal behavior; (2) to provide a means to determine whether a juvenile has committed offenses as defined in the JJA; (3) to make the juvenile offender responsible for his or her behavior; (4) to provide for punishment commensurate with the age, crime, and criminal history of the juvenile; (5) to provide due process for juveniles alleged to have committed an offense; (6) to provide treatment, supervision, and custody of juvenile offenders; (7) to provide, where consistent with public safety, for the handling of juvenile offenders by communities; (8) to provide for restitution to crime victims; (9) to develop standards and goals for the operation, funding, and evaluation of the juvenile justice system; (10) to provide a policy to determine what types of offenders will receive punishment, treatment, or both; and (11) to

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[13] *See* RCW 13.40.010(2)(k).

[14] RCW 13.40.010(2).

[15] RCW 13.40.010(2).

[16] RCW 13.40.010(2)(a)-(k).

encourage the juvenile's parents, guardian, or custodian to actively participate in the juvenile justice process. The eleventh purpose was added in 1997, and emphasizes the focus on the needs of the juvenile offender. The legislative statement of purpose was otherwise unchanged.[17]

This statement differs markedly from the legislature's statement of purpose in enacting the Sentencing Reform Act (SRA), applicable to adult criminal proceedings. The SRA focuses primarily on punishment, not rehabilitation; only one of six purposes addresses rehabilitation.[18] The fact that one of the purposes of the JJA is to hold juveniles accountable for criminal behavior does not erase the differences between the adult and juvenile systems. As the Court observed in *Schaaf*, it is the nature of the

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[17] The emphasis on family involvement is found elsewhere in recent amendments. *See* RCW 5.60.060(2)(b) (attorney-client privilege protects parents from being compelled to disclose the juvenile's communication with his or her attorney); RCW 13.40.130(2), (10) (parents must attend hearings and may be held in contempt for failing to attend).

[18] The purposes of the SRA are to:

> (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
>
> (2) Promote respect for the law by providing punishment which is just;
>
> (3) Be commensurate with the punishment imposed on others committing similar offenses;
>
> (4) Protect the public;
>
> (5) Offer the offender an opportunity to improve him or herself;
>
> (6) Make frugal use of the state's resources.

RCW 9.94A.010.

penalty, not the criminal act committed, that distinguishes the juvenile from the adult system.[19]

B. "Conviction" of Juveniles

Significant to the *Schaaf* Court's analysis was the fact that under the juvenile code, an adjudication does not constitute conviction of a crime. RCW 13.04.240 provides: "An order of court adjudging a child delinquent or dependent under the provisions of [RCW 13.04] shall in no case be deemed a conviction of crime." Thus, "an act which would be a crime if committed by an adult is not a crime, and thus not a felony, if committed by a juvenile."[20]

RCW 13.04.240 was not changed by the 1997 amendments. But Appellants argue it was repealed by implication, because the 1997 amendments added a separate provision to the juvenile code, which gives the term "adjudication" the same meaning as the term "conviction" under the SRA.[21] under the SRA, the term "conviction" now includes an adjudication of guilt under Title 13 RCW.[22] Appellants argue that the amendment reveals a legislative intent to "dismantle all significant distinction between adult and juvenile court," principally because

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[19] *Schaaf*, 109 Wn.2d at 7-8 (citing *State v. Bird*, 95 Wn.2d 83, 91, 622 P.2d 1262 (1980) (Doliver, J., dissenting)).

[20] *In re Weaver*, 84 Wn. App. 290, 294, 929 P.2d 445 (1996); *see also State v. Cheatham*, 80 Wn. App. 269, 273, 908 P.2d 381 (1996) (noting that juvenile cannot be convicted of a crime or a felony).

[21] RCW 13.04.011(1).

[22] RCW 9.94A.030(9).

juvenile adjudications are now considered as criminal history in sentencing adult offenders.

The amendments seem to have imparted some confusion as to terminology. But we find the issue not pertinent to the question before us. The fact that a juvenile adjudication will be considered as criminal history in a later adult prosecution is not new,[23] and does not determine whether the juvenile proceeding itself so resembles an adult proceeding as to require a jury trial. Nor was terminology (i.e., conviction versus adjudication) the focus of the *Schaaf* Court's emphasis. The Court specifically enumerated several differences in consequences, such as availability of diversion and different detention facilities for juveniles.[24] If these differences remain, it does not matter if the differences in terminology do not. Rather, the question is whether the purposes, procedures, and penalties for juvenile proceedings have become so similar to those for adults as to eliminate the distinctions that have led courts to conclude the right to a jury trial does not extend to juveniles.

C. Other Amendments

Appellants contend that certain other specific 1997 amendments, taken together, compel the conclusion that the differences are indeed overwhelmed by the similarities. These cited changes fall into three general categories: privacy of records, public stigma, and severity of penalty.

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[23] *See State v. Randle*, 47 Wn. App. 232, 734 P.2d 51 (1987).

[24] *Schaaf*, 109 Wn.2d at 8.

1. Records

Before the 1997 amendments, a juvenile could have his or her record sealed after two years, and destroyed when the juvenile reached 23 years of age.[25] Also, a person 18 years of age or older whose criminal history consists of only one referral for diversion could have his or her record destroyed if two years had elapsed since completion of the diversion agreement.[26] Under the amended provisions, records of class C offenses other than sex offenses may be sealed only after five years, records of class B offenses other than sex offenses may be sealed only after 10 years,[27] and records of class A offenses and sex offenses may never be sealed.[28]

The statutes allow for the destruction of records only if the juvenile's criminal history consists of only one referral for diversion.[29] A juvenile justice or care agency may, however, routinely destroy records when the subject of the records reaches the age of 23, although the court may not routinely destroy the official juvenile court file or records or transcripts of any proceedings.[30]

Although the standards for sealing juvenile records have changed, the amendments have not eliminated the differences between the two systems. While sealing and destruction of a juvenile offender's records are now more

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[25] Former RCW 13.50.050(11)(a), (17).

[26] RCW 13.50.050(18).

[27] RCW 13.50.050(11)(a).

[28] RCW 13.50.050(11)(d).

[29] RCW 13.50.050(16).

[30] RCW 13.50.050(21).

restricted, the possibility remains in many circumstances, while the possibility of vacation of an adult offender's record of conviction is much more narrowly circumscribed.[31]

2. Stigma

Appellants argue that such stigma now attaches to a juvenile adjudication that a jury trial is required. They point to RCW 9.41.040, defining the crime of unlawful possession of a firearm by a felon, under which a "conviction" is defined to include a juvenile adjudication of guilt.[32] They recount a number of ways in which juvenile adjudications may have collateral consequences, and assert that under the statutes currently in effect, DNA samples may be taken from juveniles, juvenile adjudications may be disseminated, a juvenile adjudication may prevent a person from serving on a jury, and juveniles who commit alcohol and drug offenses lose their driver's licenses for a specified period and are ineligible for public assistance and food stamps. Because of these factors,

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[31] For example, an adult offender may not have his or her record of conviction cleared if: (1) there are criminal charges against the offender pending in a court of this or any other state, or a federal court; (2) the offense was a violent offense; (3) the offense was a crime against persons; (4) the offender was convicted of another offense since discharge from prison; (5) the offense was a class B felony and less than 10 years have passed since discharge; or (6) the offense was a class C felony and less than five years have passed since discharge. RCW 9.94A.230(2).

[32] RCW 9.41.040(3); *see also State v. McKinley*, 84 Wn. App. 677, 929 P.2d 1145 (1997).

they claim the stigma that attaches to a juvenile adjudication is equal to the stigma that attaches to a conviction in adult court.

The fact that the 1997 amendments may have increased the stigma of a juvenile adjudication does not by itself compel the conclusion that the juvenile system is no longer more rehabilitative in its treatment of offenders or more responsive to the needs of offenders than the adult criminal system. We thus turn to a review of the effect of the amendments on the critical penalty aspect.

3. Punishment

a. Possible future consequences. Appellants first focus on the increased severity of possible future consequences regarding adult punishment. They argue that the way in which juvenile adjudications are now counted as prior offenses under the SRA in computing an adult's sentence shows the similarity between the adult and juvenile systems. But as we have discussed above, the consideration of prior juvenile adjudications when sentencing an adult is nothing new. Even before enactment of the SRA, it was permissible to consider prior juvenile offenses at a subsequent adult sentencing. "The mere fact that such use is now mandatory in certain circumstances does not constitute any additional punishment for the prior behavior or attach any additional 'stigma' to the juvenile offenses."[33] Changes in the way juvenile offenses are treated as prior offenses under the SRA do not affect

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[33] *State v. Randle*, 47 Wn. App. 232, 241, 734 P.2d 51 (1987).

the punishment imposed upon the juvenile for the juvenile offense, and so do not support a conclusion that juveniles are entitled to jury trials.

In a related argument, Appellants identify, as perhaps the "most ominous implication" of recent changes, the possibility that juvenile adjudications may be counted as "strikes" under the persistent offender statute, RCW 9.94A.030(27). We first note that a juvenile cannot be classified as a persistent offender. A "persistent offender" is defined as "an *offender* who: . . . has been convicted *as an offender* on at least two separate occasions."[34] The SRA defines "offender" as:

> a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110.[35]

Under this definition, a juvenile who is tried as a juvenile and not as an adult is not included in the definition of offender under the SRA, and therefore a juvenile offender is never eligible to be treated as a persistent offender, and juvenile adjudications do not qualify as "strikes."

Similarly, Appellants also claim that juvenile adjudications will affect eligibility under the SRA for the drug offender sentencing option and work ethic camp. But the same definition of "offender" applicable to the persistent

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[34] RCW 9.94A.030(27) (emphasis added).

[35] RCW 9.94A.030(25).

offender statute also applies to the SRA provisions governing the drug offender sentencing option,[36] and to work ethic camp.[37] An adjudication in juvenile court does not make one an "offender" under these provisions, so again, we disagree with Appellants' interpretation of the statutes.

Next, Appellants point out that a juvenile felony record may render an adult ineligible for the first-time offender waiver under RCW 9.94A.120(5). The first-time offender waiver is available only to persons who have never previously been convicted of a felony in Washington.[38] Because "conviction" under the SRA includes adjudications of guilt under Title 13 RCW,[39] and "adjudication" under the juvenile code has the same meaning as conviction,[40] it is arguable that juveniles who have been adjudicated guilty of felonies are ineligible for a first-time offender waiver for their first adult offense. Once again, however, in determining whether juveniles are entitled to a jury trial, the focus is on the punishment and procedures in the juvenile system as compared to the adult criminal system. That a juvenile felony record may deny an adult a first-time offender waiver has no bearing on whether juveniles are treated differently than adults at the time of the juvenile offense.

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[36] RCW 9.94A.120(6)(a)(ii).

[37] RCW 9.94A.137(1)(a)(ii).

[38] RCW 9.94A.030(22).

[39] RCW 9.94A.030(9).

[40] RCW 13.04.011(1).

In sum, the increased severity of the future consequences of a juvenile adjudication brought about by the 1997 amendments to the juvenile justice code does not constitute additional punishment of the juvenile[41] and does not compel the conclusion that juveniles are constitutionally entitled to a jury trial.

b. Immediate consequences. Appellants also point to other changes, however, which do affect the juveniles at the time of the juvenile adjudication: revision of the Option B sentencing option, the elimination of minor, middle, and serious offender designations, and the slight lengthening of the minimum period of Division of Juvenile Rehabilitation (DJR) commitment. Appellants assert that these changes significantly diminish the discretion of juvenile court judges to determine whether DJR commitment, as opposed to community supervision, is appropriate, and thus lessen the degree to which the juvenile court can tailor individualized treatment to the needs of the particular offender.

We disagree with Appellants' view of the effect of these changes. While Appellants are correct that the changes may lessen the scope of discretion available to the juvenile court in fashioning a rehabilitative disposition for the most serious offenders, the juvenile court's discretion for other offenders is enhanced under the amendments. A clearer emphasis is placed on "local sanctions"; the juvenile court retains discretion to determine whether treatment within the community is a more

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[41] *Randle*, 47 Wn. App. at 241.

appropriate disposition than incarceration,[42] and to order community supervision, which may include individualized programs involving employment, education, or treatment.[43] Community-based rehabilitation, which may be included in an order of community supervision and which may consist of educational, treatment, and outpatient mental health programs, was expanded by the amendments to include employment and literacy programs.[44] If the court concludes that a disposition within the standard range would effectuate a manifest injustice, the court may impose a disposition outside the standard range, which shall be comprised of confinement, community supervision, or a combination of both.[45] Further, juveniles retain the opportunity to avoid adjudication altogether through diversion agreements and deferred dispositions,[46] which focus on rehabilitation and are either not available in the adult criminal system or are available only in a very limited context (deferred sentences).[47] The juvenile court thus retains discretion to

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[42] RCW 13.40.0357 (Option A).

[43] RCW 13.40.020(4).

[44] RCW 13.40.020(1).

[45] RCW 13.40.160(2).

[46] *See* RCW 13.40.070, .080.

[47] *See e.g.*, RCW 9.94A.130 (abolishing the power to defer or suspend the imposition or execution of a sentence for felonies committed after June 30, 1984, except for offenders sentenced under the special sex offender sentencing alternative); RCW 10.05 (allowing, under specified circumstances, a person charged with a misdemeanor or gross misdemeanor to petition a court of limited jurisdiction to be considered for a deferred prosecution program).

tailor the disposition to meet the needs of the juvenile and the rehabilitative and accountability goals of the juvenile code.

In contrast, the adult sentencing court ordinarily has no discretion to order an adult felon to participate in employment or educational programs,[48] and may order a defendant to participate in outpatient mental health treatment only if a presentence report provides reasonable grounds to believe that the defendant is a mentally ill person as defined in RCW 71.24.025 and that this condition was likely to have influenced the offense.[49] The adult sentencing court has discretion to order rehabilitation only where an offender meets the requirements for a first offender waiver,[50] a drug offender sentencing alternative,[51] or a sex offender alternative.[52] The adult equivalent of a juvenile manifest injustice sentence, an exceptional sentence, may include rehabilitative measures only if the reasons for doing so are substantial and compelling.[53] The adult sentencing court thus has very little discretion to order rehabilitative measures.

Appellants urge that changes to the restitution provisions of the juvenile code illustrate the legislature's decision to make the juvenile code more of a "just desserts [sic]" code, and thus more like the adult criminal code.

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[48] RCW 9.94A.030(11).

[49] RCW 9.94A.120(20).

[50] RCW 9.94A.120(5).

[51] RCW 9.94A.120(6).

[52] RCW 9.94A.120(8).

[53] *State v. Estrella*, 115 Wn.2d 350, 358, 798 P.2d 289 (1990).

But juvenile restitution is remedial, not punitive,[54] and thus does not advance Appellants' arguments here.

Appellants also point to the community notification provisions now applicable to juveniles found to have committed a violent offense, a sex offense, or stalking.[55] The adult sex offender registration statute does not constitute punishment, but rather is a regulatory measure.[56] It follows that community notification requirements for juvenile offenders are likewise not punitive, and do not affect a juvenile offender's right to a jury trial.

We thus identify numerous provisions in the juvenile code remaining after the 1997 amendments that preserve the critical differences between the adult and juvenile systems. The juvenile code also provides for much more lenient penalties,[57] a difference that weighs heavily in the

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[54] *State v. Hartke*, 89 Wn. App. 143, 147, 948 P.2d 402 (1997).

[55] RCW 13.40.215.

[56] *State v. Ward*, 123 Wn.2d 488, 510, 869 P.2d 1062 (1994).

[57] As the State points out, E.S. was committed to the Division of Juvenile Rehabilitation for five to seven months for the commission of the offense of indecent liberties, while an adult convicted of the same offense would face a standard range of 57 to 75 months. T.M. was convicted of possession of cocaine with intent to deliver and faced a commitment of 19 to 23 months. Had he been convicted of this offense as an adult, his standard range, considering his history of three prior felony offenses, would have been 154 to 254 months. R.G. was ordered to serve two days of confinement for residential burglary; as an adult, he would have faced a standard range of three to nine months. J.H. was found guilty of making threats to bomb or injure property and was ordered to serve five days of confinement. An adult convicted of the same crime would face a standard range of three to nine months.

balance between the two systems for purposes of a juvenile's right to a jury trial.[58]

A telling illustration of the fact that juvenile proceedings remain more lenient and more rehabilitative than adult criminal proceedings is the fact that none of the juveniles involved in this appeal availed themselves of the opportunity, pursuant to RCW 13.40.110, to request the juvenile court to decline jurisdiction and transfer the matter to the adult criminal system, where a jury trial would have been available. In fact, one appellant expressly opposed declination of juvenile court jurisdiction, pointing to the fact that his lack of sophistication and maturity were the bases for the probation department's recommendation that he be retained in the juvenile system rather than be transferred to the adult criminal system. Notably, he argued that because he is an emotionally immature teenager, he would greatly benefit from the counseling available in the juvenile justice system:

> While in the juvenile detention system, [the juvenile] would be eligible to receive both counseling and assistance from a number of programs only available through the JRA. In the event [he] was convicted and sentenced as an adult, he would simply serve out his sentence and receive nothing in the way of rehabilitative programs.

The penalties and procedures under the juvenile system thus remain significantly different from those under the adult criminal system after the 1997 amendments.

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[58] *State v. Schaaf*, 109 Wn.2d 1, 7-8, 743 P.2d 240 (1987).

While those amendments somewhat increased its punishment aspect, they also increased its rehabilitative scope. The juvenile system continues to focus to a greater degree on the needs of the offender and on the goal of rehabilitation, rather than on punishment, which is the primary focus of the adult system. The continued existence of these differences compels us to conclude that the right to a jury trial does not apply to juvenile proceedings.

It is noteworthy that the amendments to the juvenile justice provisions considered in *Schaaf* went farther towards making the juvenile system more of a "just desserts [sic]" system, similar to the adult system, than do the 1997 amendments under scrutiny here. The *Schaaf* Court rejected the arguments that the amendments created a constitutional right to a jury trial in juvenile adjudications. We cannot say that the 1997 amendments change the results of the analysis. The *Schaaf* Court's reasoning still applies:

> In sum, while juvenile proceedings are similar to adult criminal prosecutions, enough distinctions still exist to justify denying juvenile offenders the right to a trial by jury. Juvenile offenders are afforded special protections under the present system, and we perceive no valid reason to jeopardize those protections by making juvenile proceedings fully akin to adult proceedings.[59]

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[59] *Id.* at 22.

III. State Jury Trial Guarantee

The Washington constitution guarantees a jury trial in criminal prosecutions and also provides that the "right of trial by jury shall remain inviolate."[60] Appellants argue that even if they are not entitled to a jury trial under the federal constitution, they are so entitled under these provisions of the state constitution.

The Court in *Schaaf* considered and rejected this argument. The Court undertook a *Gunwall*[61] analysis to determine whether the protection afforded under the state constitution is broader than that afforded under the federal constitution. Of the six *Gunwall* factors,[62] the Court relied most heavily on the state constitutional and common law history and the preexisting state law factors in reaching its conclusion that the state constitution did not mandate jury trials in juvenile proceedings.

With respect to the state constitutional and common law history factor, the juveniles in *Schaaf* argued that because article 1, section 21 preserves the right to a jury trial as that right existed at common law in the territory when section 21 was adopted, they are entitled to a jury trial under the state constitution because they would

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[60] Wash. Const., art. I, §§ 21, 22.

[61] *State v. Gunwall*, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986).

[62] (1) The textual language of the state constitution; (2) a comparison of the texts of parallel provisions of the state and federal constitutions; (3) state constitutional and common law history relating to the provisions at issue; (4) preexisting state law; (5) the structural difference between the federal and state constitutions; and (6) whether the matter is of state interest or local concern.

have been guaranteed a jury trial at the time the state was a territory. In rejecting this claim, the Court stated that this argument

> overlooks the salient fact that territorial lawmakers did not anticipate the enactment of a separate juvenile justice system. Washington did not create a separate juvenile court system until 1905, and did not pass comprehensive legislation concerning the juvenile justice system until 1913. It does no violence to our state's common law history to give credence to a 70-year-old legal system that was nonexistent in our territorial days.[63]

The 1997 amendments do nothing to diminish the validity of the Supreme Court's reasoning.

With respect to the preexisting state law factor, the Court noted that since the creation of the juvenile court system, "this state has been trying to avoid accusing and convicting juveniles of crimes."[64] The Court recognized that since its creation, the juvenile justice system has placed increased emphasis on the juvenile's criminal activity. But, because the changes to the JJA did not create a rigidly punitive system that mirrored in every respect the adult criminal justice system, the Court in *Schaaf* declined to "adopt a system where juveniles are treated as adult criminals."[65]

It is fair to say that the 1997 amendments increased the juvenile code's emphasis on accountability for serious

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[63] *Schaaf*, 109 Wn.2d at 14 (footnote omitted).

[64] *Id.* at 15.

[65] *Id.*

criminal activity. The amendments also, however, enhanced the court's ability to address the needs of juvenile offenders. Emphasis is still placed on rehabilitation in the juvenile system, whereas the adult system focuses almost entirely on punishment. The Court's statements in *Schaaf* still apply. Thus, even after the 1997 amendments to the juvenile justice provisions, the state constitution still does not guarantee to juveniles the right to trial by jury.

IV. Federal and State Equal Protection Guarantees

Appellants also argue that the denial of a jury trial embodied in RCW 13.04.021(2) violates both the federal and state equal protection guarantees. The first step in an equal protection analysis is to determine the proper test under which to analyze this claim. "Juveniles are neither a suspect class nor a semi-suspect class."[66] For the reasons expressed above, the jury trial guarantees in the constitutions do not apply to juveniles. Thus, as before the 1997 amendments, a jury trial is not a fundamental right from a juvenile's standpoint.[67] Accordingly, the juveniles' equal protection claim is properly analyzed under the rational relationship test.[68]

> "The rational relationship test is the most relaxed and tolerant form of judicial scrutiny under the equal protection clause. Under this test, the legislative classification will be upheld

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[66] *In re Boot*, 130 Wn.2d 553, 572-73, 925 P.2d 964 (1996).

[67] *Schaaf*, 109 Wn.2d at 21.

[68] *Id.*

> unless it rests on grounds wholly irrelevant to achievement of legitimate state objectives."[69]

The Court in *Schaaf* applied the rational relationship test to RCW 13.04.021(2) and held that the statute did not violate the equal protection clause:

> We conclude that the Legislature's statutory denial of jury trials to juveniles is rationally related to its desire to preserve some of the unique aspects of the juvenile court system. Juveniles do have distinguishing characteristics – age and vulnerability – relevant to interests the state has authority to implement – rehabilitating and treating – and the unique features of the juvenile court system are rationally related to furthering those interests.[70]

The absence of a jury trial remains an important example of the unique rehabilitative nature of juvenile proceedings.[71] Because the juvenile justice provisions as amended still retain significant differences from the adult criminal justice system and still afford juveniles special protections not offered to adults, then, under the rational relationship test, RCW 13.04.021(2) does not violate the equal protection guarantees of the state and federal constitutions. Neither the federal nor state constitution requires that a juvenile be accorded a jury trial. We therefore affirm.

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[69] *In re Boot*, 130 Wn.2d at 573 (quoting *State v. Shawn P.*, 122 Wn.2d 553, 561, 859 P.2d 1220 (1993)).

[70] *Schaaf*, 109 Wn.2d at 22.

[71] *Id.*

The balance of this opinion has no precedential value and will not be published, but will be filed for public record pursuant to RCW 2.06.040.

Z.B.

Z.B. was found guilty of second degree assault. The charges arose out of an incident that began when the victim, Thomas Marum, asked Z.B. and his friend to leave his property because they were trespassing. When the juveniles refused his request, Marum followed them as they continued walking across his property and repeatedly told them to leave because they were trespassing. Z.B.'s and Marum's versions of the events that subsequently unfolded differ markedly.

Z.B. claims that Marum caught up to him and his friend and shouted at them, shoved them, and threatened them with bodily injury or death, including death by drowning in the river while tied to an anchor. Z.B. claims that Marum was drunk, smelled heavily of alcohol, was slurring his words, was weaving as he walked, and was holding a beer can. According to Z.B., he and his friend ignored Marum's assaults and threats and asked him to leave them alone because they did not want any problems.[72]

According to Z.B., Marum chased after Z.B's friend, threatening to kill him. The friend ran away. Marum stopped chasing him and then turned toward Z.B. Z.B. claims that Marum grabbed him, threw him to the

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[72] Z.B.'s friend's description of these events is very similar to Z.B.'s.

ground, and kicked him in the head. Z.B. testified that he saw Marum's foot coming near his face and he rolled over to escape being stepped on. Z.B. then got to his feet and stabbed Marum in the abdomen with his hunting knife. At some point during this encounter, Z.B. claims, he blacked out and has no recollection of stabbing Marum. He does not, however, deny that he did so. He testified that the next thing he remembers, after Marum threw him to the ground and continued to beat him, is standing up and looking at Marum while holding his hunting knife. Marum was bleeding from the stomach.

Marum denied harassing, threatening, or assaulting the juveniles, and claims to have had fewer than two beers the evening of the incident. He testified that the juveniles taunted him by threatening to take "everything he owns" if he laid a finger on them. He claims to have been the victim of an unprovoked attack.

The trial court found the juveniles' version of events to be closer to what probably actually happened with respect to the pushing, prodding, shoving, and aggravation than Marum's version. The court did not find Marum's claim that he had only two beers to be credible. Consequently, the court found that the credibility of the rest of Marum's testimony was called into doubt. The court, however, also did not find credible Z.B.'s claim that he saw Marum's foot approaching his face and his claim that he blacked out. Referring to Z.B., the court stated, "one seldom sees one testifying in court with such self assurance." The court noted that Z.B. was able to stand up to cross examination that was at times confrontational and "never give an inch." The court stated:

> So evaluating [Z.B.], that is taking that evaluation based upon my observations of [Z.B.] here in court, and taking the version of events that occurred on the dike road and down to 412th as I've seen them with some aggravation by Mr. Marum, some pushing and shoving, general aggravation and perhaps confrontation, I cannot believe and do not that [Z.B.] ever during that course felt himself to be in danger of death as he testified or in danger of really serious bodily injury.

The court found "no question" beyond a reasonable doubt that a reasonably prudent person in a similar situation would not have taken out a knife and stabbed the other person as Z.B. did.

Z.B. claims the evidence was insufficient for the trial court to have found that the force Z.B. used was unlawful. We disagree.

> In reviewing the sufficiency of evidence in a criminal case, the question is whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.[73]

Self defense negates the knowledge element of second degree assault and rebuts the "unlawful" element of

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[73] *State v. Aten*, 130 Wn.2d 640, 666-67, 927 P.2d 210 (1996) (footnotes and quotations omitted).

assault.[74] Self defense is established if the defendant had a good faith belief in the necessity of force and that belief was objectively reasonable.[75]

Credibility determinations are within the province of the trier of fact and generally will not be disturbed on appeal.[76] Thus we will not disturb the trial court's decisions regarding the credibility of Z.B. and Marum's testimony. Given these determinations, and viewing the evidence in the light most favorable to the State, we find the evidence sufficient to support the trial court's conclusion that the force Z.B. used was unlawful. The evidence shows that Marum, most likely while drunk, verbally harassed and shoved Z.B. and his friend, but not that he threatened their lives or threw Z.B. to the ground and tried to step on his head. We agree with the trial court that while prolonged aggravation of this type (it continued for about 45 minutes) could make a person quite angry and impatient, it does not justify fear of death or serious bodily injury such that stabbing can be deemed a justifiable use of force. The evidence was sufficient to sustain Z.B.'s adjudication.

J.A.

J.A. was charged with second degree assault. The charge arose out of an incident that occurred while J.A.

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[74] *State v. Acosta*, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984).

[75] *State v. Dyson*, 90 Wn. App. 433, 438-39, 952 P.2d 1097 (1997).

[76] *State v. Barnes*, 85 Wn. App. 638, 666, 932 P.2d 669 (1997).

was driving his car with a group of friends. J.A.'s girlfriend was in the front passenger seat. Three other juveniles were in the back seat. The group had been driving around shooting paint balls from a paint ball gun at signs, fences, and other targets. While driving, the group saw the victim walking along the sidewalk in the same direction the car was traveling. J.A.'s girlfriend knew the victim and did not like her. J.A.'s girlfriend told J.A. to turn the car around and said "let's shoot her," referring to the victim. J.A. turned the car around and drove back towards the victim. J.A.'s girlfriend urged one of the persons in the back seat, J.M., to shoot at the victim. J.M. complied. The victim was hit in the shoulder with a paint ball but was not injured. She continued walking on the sidewalk. After the car passed the victim, J.A. turned the car around, so it was once again traveling in the direction in which it had initially been traveling and was on the same side of the street on which the victim was walking. J.M. shot at the victim a second time. This time, the paint ball hit her in the eye. She lost her vision in that eye and required cataract surgery to restore it. The trial court found that J.A. turned the car around the second time to pass the victim, knowing that the plan was to shoot at her and knowing that turning the car around would facilitate the assault. The court found J.A. guilty of second degree assault as an accomplice.

J.A. argues that the evidence was insufficient to support his adjudication because there was no evidence that he knew J.M. would shoot the victim the second time, and because there was no evidence of anything but his failure to act to prevent the second shooting. He argues that by turning the car around the second time, he was

not facilitating the commission of the crime, but rather was merely returning the car to the direction it was initially traveling. We disagree.

> In reviewing the sufficiency of evidence in a criminal case, the question is whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.[77]

A person is an accomplice of another person in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either "solicits, commands, encourages, or requests such other person to commit it; or aids or agrees to aid such other person in planning or committing it."[78] A person's physical presence at the crime scene and assent to the crime committed, without more, are insufficient bases upon which to establish accomplice liability.[79] Rather, to be an accomplice, a person must associate himself or herself with the undertaking, participate in it as something he or she desires to bring about, and seek

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[77] *Aten*, 130 Wn.2d at 666-67 (footnotes and quotations omitted).

[78] RCW 9A.08.020(3)(a).

[79] *State v. Amezola*, 49 Wn. App. 78, 89, 741 P.2d 1024 (1987).

by his or her actions to make it succeed.[80] That is, the person must be ready to assist in the crime.[81]

Further, "accomplice liability must be read against the crime charged."[82] However, for accomplice liability to attach, one need not know the degree of the crime committed or have the same mental state or specific knowledge of every element of the coparticipant's crime.[83] Rather, the accomplice need only have " 'general knowledge of his coparticipant's substantive crime.' "[84]

Taken in the light most favorable to the State, we find the evidence sufficient to establish J.A.'s liability as an accomplice. It is undisputed that the car from which the paint balls were shot, and the paint gun, were J.A.'s. The victim was clearly J.M.'s target. The record establishes that J.A. turned the car around the first time at the insistence of his girlfriend, who wanted J.M. to shoot the victim with a paint ball. There is no evidence that J.M. moved away from the window after he fired the first shot. It should have been obvious to J.A. that the car would pass the victim once again if he turned it around, and there is no evidence that J.A. attempted to prevent

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[80] *State v. Roberts*, 80 Wn. App. 342, 355-56, 908 P.2d 892 (1996).

[81] *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

[82] *State v. Nguyen*, ___ Wn. App. ___, 972 P.2d 573, 576 (1999).

[83] *Id.*

[84] *Id.* (quoting *State v. Rice*, 102 Wn.2d 120, 125, 683 P.2d 199 (1984)).

J.M. from firing the second shot.[85] In fact, there was testimony that J.A., his girlfriend, and J.M. told the others in the car who were urging them to stop shooting not to worry. We agree with the trial court that by turning the car around and passing the victim a third time (this time on the same side of the road as the victim), while J.M. was still hanging out the window of the car holding the paint gun, J.A. acted with knowledge that his actions would facilitate the commission of the crime. Such evidence further establishes that J.A. had general knowledge of J.M.'s substantive crime. We therefore find the evidence sufficient to support the court's finding that J.A. was guilty as an accomplice.

J.A. also argues that the legislature has not allowed courts to adjudicate juvenile offenders guilty as accomplices. He did not raise this argument below, and because it is not of constitutional magnitude, he is not entitled to have it reviewed for the first time on appeal.[86]

In any event, we find his argument without merit. An "offense" is defined under the juvenile code as "an act designated a violation or crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that

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[85] *See* RCW 9A.08.020(5)(b) (a person is not an accomplice if he or she makes a good faith effort to prevent the commission of the crime).

[86] *State v. Gould*, 58 Wn. App. 175, 186, 791 P.2d 569 (1990) (noting that the trial court must have an opportunity to reflect and rule upon any claimed nonconstitutional error prior to appellate review).

state."[87] There is no exception in this definition regarding accomplice liability. An adult is guilty of a crime if it is committed by the conduct of another person for which the adult is legally accountable.[88] An adult is legally accountable for the conduct of another person if he or she is an accomplice of such other person in the commission of the crime.[89] Thus, an adult's acting as an accomplice to the commission of a crime renders the adult guilty of a crime. Pursuant to RCW 13.40.020(19), such act committed by a juvenile would constitute an offense under Title 13, and is therefore an act with which a juvenile may be charged.

J.A. argues further, again for the first time on appeal, that it is not possible to act as an accomplice to second degree assault because that crime contains a recklessness element. He claims it is a due process violation for a defendant to be deemed to have intended to further a crime based on recklessness. "Issues of constitutional magnitude may be raised for the first time on appeal."[90]

We reject J.A.'s argument. To be held liable as an accomplice, a person need not have specific knowledge of the elements of the principal's crime. Thus, in order to be adjudicated as an accomplice to second degree assault, it is not necessary that the juvenile be deemed to have intended another's reckless behavior. Rather, "[a]ccomplice liability is premised on the accomplice's

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[87] RCW 13.40.020(19).

[88] RCW 9A.08.020(1).

[89] RCW 9A.08.020(2).

[90] *State v. Deal*, 128 Wn.2d 693, 698, 911 P.2d 996 (1996).

general knowledge that he is assisting the principal in committing a crime."[91] The evidence in J.A.'s case supports the conclusion that by turning the car around to pass the victim the third time, J.A. knew he was facilitating J.M.'s commission of an assault by shooting the victim with the paint gun. That is enough to hold J.A. liable as an accomplice. The fact that the crime committed happened to contain a recklessness element is not relevant to the determination of J.A.'s accomplice liability.

G.K. and L.K.

G.K. argues that his adjudication must be reversed because the trial court failed to enter written findings of fact and conclusions of law pursuant to CrR 3.5 and 3.6. About a month after G.K.'s appellate brief was filed, written findings and conclusions were entered regarding the CrR 3.6 hearing. The State asserts that written findings and conclusions were entered regarding the CrR 3.5 hearing on June 11, although they are not in the record.

We reject G.K.'s argument because he has failed to demonstrate any prejudice arising from the failure to enter or the delayed entry of findings and conclusions.[92] By his own admission, G.K. does not challenge the court's oral findings and conclusions. He argues that written findings and conclusions may be necessary if he files a

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[91] *State v. Ferreira*, 69 Wn. App. 465, 472, 850 P.2d 541 (1993).

[92] *State v. Moore*, 70 Wn. App. 667, 671, 855 P.2d 306 (1993) ("Delayed entry of findings and conclusions after a suppression hearing has been held not to be reversible error where the delay did not prejudice the defendant or prevent effective appellate review.").

pro se supplemental brief. He has not, however, filed a pro se brief and the time for doing so has expired. The constitutional issues G.K. raises do not depend on the findings and conclusions. Thus, there has been no prejudice from the delayed entry of findings and conclusions, and the delay provides no basis for the reversal of G.K.'s adjudication.

G.K. and L.F. also argue that the trial court failed to comply with JuCR 7.11 because it failed to enter written findings and conclusions. Under JuCR 7.11(d), the trial court is required to enter written findings and conclusions stating the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision.

G.K. does not claim that the court's failure to comply with JuCR 7.11 requires reversal of his adjudication. Rather, the remedy he requests is an order directing the trial court to enter its findings and conclusions. After G.K. filed his opening appellate brief, the trial court entered its written findings and conclusions. Thus, he has obtained the relief he requested.

L.F. argues that the trial court's failure to comply with JuCR 7.11(d) requires reversal of his adjudication. The court entered written findings and conclusions in L.F.'s case about two weeks before his opening brief was filed. We reject his argument that the delay requires reversal. The same rule regarding the necessity of showing prejudice from the delayed entry of findings and conclusions that applies in the context of issues arising under CrR 3.5 and 3.6 also applies to the entry of findings

and conclusions pursuant to JuCR 7.11.[93] L.F. does not raise any issue that is dependent upon the trial court's factual findings. Therefore, L.F. can not have been prejudiced by the delayed entry of written findings and conclusions. We thus find that the delayed entry of findings and conclusions provides no grounds for reversal of L.F.'s adjudication.

The judgments are affirmed in each of the cases consolidated herein.

/s/ Illegible

WE CONCUR:

/s/ Agid, ACJ

/s/ Kennedy, C.J.

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[93] *Id.*

APPENDIX B

( ) Clerks Action Required

[SEAL]

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING
JUVENILE COURT

NO. 97-8 06322-3

State of Washington v.

ANDEREGG, JAMES

DOB: 4/26/81 **Order of Disposition**

I. BASIS

1.1 A dispositional hearing was held in this case on: 2-18-98

1.2 Persons appearing at the hearing were:

(✓) Juvenile _____
(✓) Probation Counselor Illegible
(✓) Juvenile's Lawyer GUTERSON
( ) Other _____
(✓) (Deputy) Prosecuting Attorney Burbank

II. FINDINGS

Based on the testimony heard and the case record to date: the Court finds:

( ) plea of guilty ( ) Alford plea

_____ _____
date date

2.1 The above named juvenile was found guilty by

(✓) the Court of the offense(s) of:

1-29-98
date

I ASSAULT 2

2.2 CATEGORY OF OFFENDER

The juvenile is:

( ) A minor or first offender
(✓) A middle offender
( ) A serious offender

2.3 MANIFEST INJUSTICE

(✓) A disposition within the standard range for this offense would effectuate a manifest injustice.

2.4 OPTION B

( ) Option B – Reasons as set forth on the record.
( ) Option B – Standard Range Suspended

NO. 322-3

2.5 The court finds that the standard range of sentence for Count I is _____ months of community supervision with _____ hours of community service; maximum $_____ fine; _____ days of confinement; commitment for illegible weeks. The standard range(s) on count(s) are found to be as stated on the record or in the Statement of Juvenile Offender on Plea of Guilty form.

III. ORDER

( ) SSODA: Respondent is committed to JRA for _____ weeks; however, that commitment is suspended on condition that he/she abide by the following conditions of SSODA.

( ) OPTION B: Respondent is committed to JRA for the standard range of _____ weeks; however that commitment is suspended upon condition that respondent comply with the conditions listed in Section 3.1.

( ) CONSECUTIVE TO: _____

3.1 **Community Supervision**

Remarks Total Months 9

Count I Count _____
Count _____ Count _____
9 months _____ months
_____ months _____ months
_____ months suspended

Community Service

50 hours _____ hours
_____ hours _____ hours

Rate is 8 hours per month, first due illegible

_____ hours suspended

(✓) For 1 hours of counseling, credit is given for 1 hours of community service.

( ) Credit given for _____ days served.

Confinement

Days 30 Days _____
_____ Days _____ Days _____

To commence on illegible
( ) passes authorized

( ) Credit given for _____ days served.

( ) _____ days suspended

( ) Consecutive

( ) To be served at JRA

( ) Secure detention

( ) To be served on weekends

(✓) Respondent is referred for Electronic Home Monitoring

ALL COUNTS WITHIN THIS NUMBER SHALL RUN CONSECUTIVELY

THE RESPONDENT SHALL ABIDE BY THE FOLLOWING TERMS AS DIRECTED BY PROBATION COUNSELOR:

(✓) Counseling, may include Anger Management.

( ) Drug-Alcohol Information/Evaluation to be completed by _____
( ) Follow all treatment recommendations

(✓) Cooperate with urinalysis as directed by JPC.

(✓) Reside in a JPC approved residence and abide by all home rules.

(✓) Abide by a curfew ( ) _____ Sunday thru Thursday, and _____ Friday and Saturday, or as imposed by JPC/parents.

(✓) Neither use nor possess any weapons, or non-prescribed drugs/alcohol.

(✓) Have no contact directly or indirectly with Courtney McCann or any family members illegible.

( ) Fine is ordered in the amount of $_____, due by _____ .

(✓) The Victim Penalty Assessment is ordered/~~waived~~ in the amount of $ 100.00, $10/month consecutive to rest.

( ) Restitution shall be determined within 30 days or a hearing will be set.

(✓) Restitution hearing is set for 3-17-98 11:00 Ct. III

(✓) Respondent's presence is waived.

( ) Supervision may be terminated upon completion of court ordered sanctions.

Additional Conditions:

_____

_____

_____

3.2 RESTITUTION

The Court Finds:

( ) That damage was done to the victim(s) in the amount of $ _____ .

( ) The amount of loss cannot be determined at this time.

( ) That the juvenile has the present ability to pay restitution in the amount of $ _____ .

( ) That the juvenile does not have the present ability to pay restitution, however that the

juvenile will develop the ability to pay restitution.

( ) That the juvenile does not have the present ability to pay restitution and cannot reasonably acquire the means to pay.

( ) Respondent shall cooperate with VORP.

3.4 CONDITIONS OF SUPERVISION: That while on community supervision the juvenile offender shall be under the charge of a probation counselor and comply with the following conditions: (1) must have parent/guardian's permission regarding whereabouts, hours, and activities (2) must report any change in residence, school, or work status to probation counselor. (Obtain permission from probation counselor before changing residence) (3) must have probation counselor's permission for out of state travel (4) must keep all appointments with probation counselor (5) must enroll in and maintain regular school attendance/GED program with no unexcused absences, tardies, suspensions, expulsions, behavioral referrals, and make best efforts to achieve passing grades and (6) shall commit no new offenses. Must further comply with any conditions set forth in writing, signed by juvenile offender, lawyer and filed herein, during the term of community supervision.

3.5 JURISDICTION

( ) Jurisdiction is extended to _____ for purposes of restitution/community supervision.

( ) Jurisdiction is transferred to _____ County.

( ) _____ retains jurisdiction on this cause number.

3.6 ( ) The following counts are hereby dismissed _____.

3.7 This order shall remain in full force and effect until further order of the Court or until the same is revoked, modified or changed, or terminated by an order of the Court or by law.

3.8 That while detained authorization is granted to provide necessary medical and dental examination and treatment as professionally prescribed.

3.9 NOTICE OF FEES

All payments ordered above are payable through the registry of the Court. A cost of $5.00 shall be collected in addition to each fee, penalty, fine or cost collected by juvenile courts. (There is no cost on payments under $25.00).

3.10 ( ) Warrant is quashed/served.

3.11 The Department of Social and Health Services, Juvenile Rehabilitation Administration, shall have the authority to consent to medical, psychological, psychiatric, and dental care, which may be deemed necessary by attending physicians, including such immunization as required of students in the public schools.

Dated: 2-18-98

/s/ John M. Darrah
Judge/~~Court Commissioner~~

FINGERPRINT(S)

Dated: _____

Fingerprints of: _____

Attested by: M. Janice Michels
CLERK

By _____
DEPUTY CLERK

CERTIFICATE

I, _____ clerk of this Court, certify that the above is a true copy of the Order of Disposition in this action on record in my office.

Dated: _____

M. Janice Michels
CLERK

By _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY
JUVENILE DEPARTMENT

STATE OF WASHINGTON, Plaintiff, v. _____, B.D. _____, Respondent.	NO. _____ NOTIFICATION OF INELIGIBILITY TO POSSESS FIREARM

Pursuant to RCW 9.41.047, RCW 9.41.040, and RCW 9.41.010, you are ineligible to possess a firearm unless your right to do so is restored by a court of record.

Illegible
DATE

John M. Darrah
JUDGE/COURT COMMISSIONER

COPY RECEIVED Illegible
RESPONDENT

DATE: _____

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY
JUVENILE DEPARTMENT

STATE OF WASHINGTON, Plaintiff, v. James Anderegg , B.D. 4/26/81 , Respondent.	NO. 97-8-06322-3 APPENDIX G ORDER FOR BLOOD TESTING AND COUNSELING

(1) [ ] HIV TESTING AND COUNSELING:

(Required for respondent convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense committed after March 23, 1988. RCW 70.24.340)

The Court orders the respondent to contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The respondent, if out of custody, shall promptly call Seattle-King Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2) [X] DNA IDENTIFICATION:

(Required for respondent convicted of sexual offense or violent offense. RCW 43.43.754):

The Court orders the respondent to cooperate with the King County Department of Youth Services and/or Juvenile Rehabilitation Administration in providing a blood sample for DNA identification analysis. The respondent, if not in custody, shall promptly call the Diagnostic Unit Office Technician at 205-9406 between 8:00 a.m. and 5:00 p.m., to make arrangements for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

DATE: 2-18-98 John M. Darrah
JUDGE/~~COURT COMMISSIONER~~

COPY RECEIVED

DATE: 2-18-98 _____
RESPONDENT

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY
JUVENILE DEPARTMENT

STATE OF WASHINGTON, Plaintiff, v. JAMES ANDEREGG (4/26/81), JOSEPH MAROSCHEK (6/26/81), AND LAUREN BREAUX (6/8/82) Respondent.	NO. 97-8-06322-3 97-8-06323-1 97-8-06324-4 **WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER having come before the Honorable Judge Downing on January 29, 1998, the respondents, James Anderegg, Joseph Maroschek and Lauren Breaux being present and represented by their respective attorneys Murray Guterson, Jim Conroy and Steven Takahashi; the State being represented through Deputy Prosecuting Attorney Marlyn K. Hawkins; the Court having heard and considered the evidence now makes and enters the following:

I. FINDINGS OF FACT

1. On September 5, 1997, the respondents Anderegg, Maroschek and Breaux were traveling along 164th Avenue in Bellevue, King County, Washington.

2. Anderegg was driving his silvery blue BMW, Breaux was the front set passenger and Maroschek was in the back seat. Also in the back seat were Hester Ryan and Stacy Block.

3. That evening, the group had been riding around, shooting paint balls from a paint ball gun at signs, fences and other targets.

4. That evening, the group drove North on 164th Street, by the 12th Place Condominiums, where Courtney McCann lives.

5. Someone in the car recognized Courtney McCann walking along the sidewalk, travelling in the same direction as the car. Hester Ryan and Stacy Black waved.

6. Respondent Breaux and Courtney McCann did not get along.

7. Respondent Breaux told the driver, Anderegg, to turn around ~~so that they could shoot at her~~ [and said "lets shoot her." /s/ WLD]

8. Respondent Anderegg made a U-turn on 164th, then drove in the opposite direction, back towards Courtney, at approximately 30 miles per hour.

9. Respondent Breaux continued to urge respondent Maroschek to shoot at Courtney, which he did.

10. Courtney was hit with a paint ball in her shoulder, but it did not hurt.

11. Courtney and her sister, Molly Savannah, continued walking home, departing 164th Avenue and continuing west towards their home.

12. After passing by Courtney a second time, respondent Anderegg turned the car around again to continue in the direction they had originally been going, passing by Courtney a third time.

13. Respondent Marosheck hung out the window of the car and shot at Courtney again, at respondent Breaux's continued urging.

14. Courtney was hit on the arm and the right eye.

15. Courtney lost vision in her right eye and was taken to the hospital by her mother.

16. Courtney suffered a traumatic cataract that would require lens replacement surgery.

17. Courtney underwent the required surgery, but still continues to have symptoms, including migraines and loss of acuity in her right eye.

18. That on or about September 5, 1997, respondent Anderegg turned his vehicle around to pass by Courtney McCann a ~~second~~ [third /s/ WLD] time, knowing that the plan was to shoot at Courtney McCann, and did so ~~in order to~~ [with knowledge that it would /s/ WLD] facilitate the assault on Courtney McCann.

19. That on or about September 5, 1997, respondent Breaux encouraged respondent Anderegg to turn his car around in order to facilitate shooting at Courtney McCann and encouraged respondent Maroschek to shoot at her.

20. That on or about September 5, 1997, respondent Maroschek shot at Courtney McCann with a paintball gun, intending to either scare her or strike her.

21. That these events occurred in King County, Washington.

CONCLUSIONS OF LAW

1. That the court has jurisdiction over this matter.

2. Respondent Anderegg was an accomplice to the intentional assault~~ed~~ [ed /s/ WLD] of Courtney McCann.

3. Respondent Breaux was an accomplice to the intentional assault~~ed~~ [ed /s/ WLD] of Courtney McCann.

4. Respondent Maroschek intentionally assaulted Courtney McCann.

5. The actions of the three respondents recklessly inflicted injury upon Courtney McCann.

6. The injury, caused by a paintball shot to Courtney McCann's eye, constitutes substantial bodily harm.

7. The court finds the respondent Anderegg guilty beyond a reasonable doubt of Assault in the Second Degree.

8. The court finds the respondent Breaux guilty beyond a reasonable doubt of Assault in the Second Degree.

9. The court finds the respondent Maroschek guilty beyond a reasonable doubt of Assault in the Second Degree.

DONE IN OPEN COURT THIS 25 day of March, 1998.

/s/ William L. Downing
HONORABLE JUDGE DOWNING

Presented by:

/s/ Marlyn K. Hawkins
Deputy Prosecuting Attorney
WSBA #91002

Copy Rec'd

/s/ Murray B. Guterson
MURRAY GUTERSON
Attorney for Respondent Anderegg
WSBA #00071

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JIM CONROY
Attorney for Respondent Maroschek
WSBA #_____

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STEVEN TAKAHASHI
Attorney for Respondent Mreaux
WSBA #_____

APPENDIX C

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JONATHAN HOWARD, Petitioner.	NO. 68377-8 **ORDER** C/A NO. 41486-1-I (41488-7, 41638-3, 41942-1, 41774-6, 41695-2, 41633-2, 42055-1, 42253-7, 41766-5, 41875-1, 41991-9 (consolidated) (Filed Dec. 2, 1999)
STATE OF WASHINGTON, Respondent, v. ZACHARIAH BENNETT, Petitioner.	
STATE OF WASHINGTON, Respondent, v. EUGENE SAUNDERS, Petitioner.	
STATE OF WASHINGTON, Respondent, v. DERAY SPILLERS, Petitioner.	

STATE OF WASHINGTON,
Respondent,
v.
RYAN GRIFFIN,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
ANTONIO WELLS,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
GEOFFREY KERBY,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
LOUIE J. FRIESZ,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
CHRISTOPHER J. MONTGOMERY,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
JAMES ANDEREGG,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
DONELE STRATUS,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
TEQUILLA McDANIEL,
Petitioner.

Department II of the Court considered this matter at its December 1, 1999, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitions for Review are denied.

DATED at Olympia, Washington this 2nd day of December, 1999.

/s/ Richard P. Guy
CHIEF JUSTICE